

Appeals court judge troubled by King County prosecutors' actions

 seattletimes.com/seattle-news/crime/appeals-court-judge-troubled-by-king-county-prosecutors-actions

By MARTHA BELLISLE

March 23, 2016

In a blistering opinion, five federal appeals court judges accused two King County prosecutors of conspiring to hide evidence and allowing a witness to make false statements on the stand.

The 9th U.S. Circuit Court of Appeals declined to offer any relief to Joshua Frost, who was sentenced to 55 years for his part in a string of robberies in 2003. But Judge Alex Kozinski and four others said in an opinion released this week that the prosecutors' actions were "troubling" and needed to be revealed.

Kozinski said it appeared the two prosecutors worked to hide a plea deal given to a man named Edward Shaw, who testified against Frost, and said allowing a witness to testify falsely would amount to professional misconduct.

The King County Prosecuting Attorney's Office violated a rule requiring the disclosure of information material to the case "by willfully withholding evidence of Shaw's domestic-violence plea deal and permitting Shaw to lie on the stand," Kozinski said.

Most Read Local Stories

- [These are the luckiest – and unluckiest – places to play the Washington lottery, data show | FYI Guy](#)
- [UPS tests tricycles with extra oomph in Seattle](#)
- [How much would I-1631's carbon fee cost you at the gas pump and to heat your home?](#)
- [Brother of girl killed at Mukilteo house party sues shooter, parents, party hosts, gun seller](#)
- [Prosecutors: Suspect became 'fixated' on homeless man before fatal Seattle shooting](#)

[Unlimited Digital Access. \\$1 for 4 weeks.](#)

Kozinski said the prosecution's tactic was deliberate, not an oversight. They kept Shaw's signed plea agreements secret until two days after Frost was convicted even though they had been signed well before the start of his trial.

"Moreover," Kozinski said, "the office stonewalled in providing Frost this information when he doggedly requested it."

King County Prosecuting Attorney Dan Satterberg denied what he called Kozinski's "unsupported accusations."

"We take our ethical obligations very seriously, and take exception to the language in his opinion suggesting a conspiracy to keep this information from the defendant," Satterberg said. "There is no evidence to suggest that employees in our office conspired to hide such

information.”

Satterberg said his office will review the case.

Erik Blevin, Frost’s lawyer on the latest appeal, said Kozinski has been outspoken about prosecutorial misconduct and often uses strong language because he believes no one is addressing the problem.

“He’s using the disinfecting effect of sunlight,” Blevin said.

After Frost’s conviction he filed an appeal, and his case reached the U.S. Supreme Court, which sent it back to the 9th U.S. Circuit Court of Appeals.

At issue was whether Frost’s lawyer should have been allowed to argue that the prosecution failed to prove Frost was an accomplice and that Frost acted under duress. The Supreme Court found the court’s refusal to let the lawyer make both arguments was harmless because Frost had confessed.

The high court sent the case back to the 9th Circuit to decide whether Frost’s claims that the prosecutors violated his rights were prejudicial. In a 6-5 decision, the appeals court said Frost didn’t show prejudice because Frost had confessed and other evidence linked him to the crimes. But five of those six judges, led by Kozinski, scolded prosecutors.

At trial, prosecutor Zachary Wagnild introduced an unsigned plea agreement for an unlawful possession charge against Shaw. The signed copy referenced a separate plea deal for Shaw on a domestic-violence charge, but it was never mentioned during Shaw’s testimony. The prosecutor who handled Shaw’s case, Gary Ernsdorff, filed the domestic-violence plea agreement two days after Frost was convicted.

“The sequence of events raises the inference that Ernsdorff collaborated with Wagnild to conceal the agreement from Frost until Wagnild had secured a guilty verdict,” Kozinski said. “If so, this would be shameful misconduct on the part of both prosecuting attorneys.”

Wagnild, who is now a private defense lawyer, denied he intentionally withheld evidence.

“As an attorney who has spent the last five years representing individuals accused of crimes, I applaud Judge Kozinski and the 9th Circuit’s efforts to ensure that the rights of the accused are zealously guarded,” he said in an email. “As a prosecutor it was always my goal to provide criminal defendants with all of evidence that could in any way be conceived to be exculpatory or otherwise helpful to the defense.”